

NOTE: CHANGES MADE BY THE COURT

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ERIC B. FROMER CHIROPRACTIC,  
INC., a California corporation,  
individually and as the representative  
of a class of similarly-situated persons,

Plaintiff,

v.

NEW YORK LIFE INSURANCE  
AND ANNUITY CORPORATION,  
NYLIFE SECURITIES LLC, and  
JOHN DOES 1-10,

Defendants.

Case No.: CV 15-04767-AB (JCx)

**CLASS ACTION**

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

This matter coming before the Court on the Motion for Final Approval of the Class Action Settlement (Dkt. No. 75) by Plaintiff, Eric B. Fromer Chiropractic, Inc. (“Plaintiff”), and Defendants, New York Life Insurance and Annuity Corporation and NYLife Securities LLC (“Defendants”), due notice given, the parties appearing through counsel,

**IT IS HEREBY ORDERED THAT:**

1           1.       This Court has jurisdiction over the parties, the members of the  
2 Settlement Class, and the claims asserted in this lawsuit.

3           2.       Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the  
4 Court considers the settlement of this action, as embodied in the terms of the  
5 Settlement Agreement, a fair, reasonable and adequate settlement of this case in the  
6 best interests of the Settlement Class in light of the factual, legal, practical and  
7 procedural considerations raised by this case.

8           3.       The Settlement Class is defined as follows: “All persons who (1) on or  
9 about March 25, 2015 or on or about March 31, 2015 (2) were successfully sent  
10 telephone facsimile transmissions titled “Savings and Investing 20/20 for Medical  
11 Professionals.” Excluded from the Settlement Class are (a) the Defendants and  
12 their present and former officers, directors, shareholders, members, managers,  
13 employees and their successors, assigns and legal representatives; (b) all persons  
14 who opted out of the settlement by timely submitting their opt-out request; and (c)  
15 the Court and its officers. The parties expressly agreed to the Settlement Class  
16 definition for settlement purposes.

17           4.       The Court finds that the Settlement Agreement has been entered into in  
18 good faith following arm’s-length negotiations.

19           5.       The Court finds that certification for purposes of settlement is  
20 appropriate because (1) the class is no numerous that joinder of all members is  
21 impractical; (b) there are questions of law and fact common to the class and they  
22 predominate over any questions affecting only individual class members; (c)  
23 Plaintiff’s claims are typical of the claims of the class; (d) Plaintiff and its attorneys  
24 will fairly and adequately protect the of the class; and (e) a class action is the  
25 superior means of resolving this controversy.

26           6.       Upon the Declaration of Dorothy Sue Merryman, the Court finds that  
27 the notice provided to the Settlement Class Members was the best notice practicable  
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1 under the circumstances and it satisfied the requirements of due process and Federal  
2 Rule 23(e)(1).

3 7. Upon the Declaration of Lewis S. Wiener the Court finds that notice  
4 has been given to the appropriate State and Federal officials in accordance with the  
5 Class Action Fairness Act, 28 U.S.C. § 1715.

6 8. No objections were received.

7 9. No persons/entities requested exclusion from the Settlement Class.

8 10. After due consideration of, among other things, the uncertainty about  
9 the likelihood of: (a) the Class's ultimate success on the merits; (b) the range of the  
10 Class's possible recovery; (c) the complexity, expense and duration of the  
11 litigation; (d) the substance and amount of opposition to the settlement; (e) the state  
12 of proceedings at which the settlement was achieved; (f) all written submissions,  
13 declarations and arguments of counsel; and (g) after notice and hearing, this Court  
14 finds that the settlement is fair, adequate and reasonable. This Court also finds that  
15 the financial settlement terms fall within the range of settlement terms that would  
16 be considered fair, adequate and reasonable. Accordingly, this Settlement  
17 Agreement should be and is **APPROVED** and shall govern all issues regarding the  
18 settlement and all rights of the Parties, including the Class Members. Each Class  
19 Member (including any person or entity claiming by or through him, her or it, but  
20 except those persons identified above who have previously excluded themselves  
21 from the Settlement Class) shall be bound by the Settlement Agreement, including  
22 being subject to the Releases set forth in the Settlement Agreement.

23 11. Defendants have created a settlement fund (the "Settlement Fund") to  
24 pay valid class member claims, class action settlement notice and administration  
25 costs, attorney's fees, costs, and expenses, and an incentive award to Plaintiff as  
26 determined and awarded by this Court. If the value of the claims does not exceed  
27 15% of the Settlement Fund (\$165,000.00), the difference between the value of  
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1 claims made and 15% of the Settlement Fund shall be paid to charity as *cy pres*.  
2 The Court has selected The Lawyers Committee for Civil Rights to receive *cy pres*  
3 in this case. The remaining unclaimed monies in the Settlement Fund shall revert  
4 back to Defendants as outlined and agreed upon in the Settlement Agreement.

5 12. As agreed in and subject to the Settlement Agreement, each member of  
6 the Settlement Class who submitted a timely and valid Claim Form will be mailed a  
7 check not to exceed \$400.00 from the Settlement Fund. The Claims Administrator  
8 received 119 claims corresponding to 314 fax transmissions. The Claims  
9 Administrator will cause those checks to be mailed after receiving the Settlement  
10 Funds from Defendants. Checks issued to the claiming Settlement Class members  
11 will be void 181 days after issuance and any amount from voided checks shall be  
12 retained by Defendants. The total amount to be paid for claims is \$125,600.00. In  
13 accordance with the Settlement Agreement, the amount shall be paid from the  
14 Settlement Fund as set forth in the Settlement Agreement.

15 13. The total amount for the *cy pres* award to The Lawyers Committee for  
16 Civil Rights to receive will be \$39,400.00 (\$165,000.00 minus \$125,600.00). In  
17 accordance with the Settlement Agreement, that amount shall be paid from the  
18 Settlement Fund as set forth in the Settlement Agreement.

19 14. The Court approves Class Counsel's attorneys' fees in the total amount  
20 of ~~\$319,000.00~~ \$106,177.50 and out-of-pocket expenses of \$12,770.00, which  
21 includes the costs of settlement administration. In accordance with the Settlement  
22 Agreement, that amount shall be paid from the Settlement Fund as set forth in the  
23 Settlement Agreement.

24 15. The Court approves a ~~\$15,000.00~~ \$1,000 incentive award to Eric B.  
25 Fromer Chiropractic, Inc., for serving as the Class Representative. In accordance  
26 with the Settlement Agreement, that amount shall be paid from the Settlement Fund  
27 as set forth in the Settlement Agreement.  
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1           16. The Court expressly adopts and incorporates herein all of the terms of  
2 the Settlement Agreement. The Parties to the Settlement Agreement shall carry out  
3 their respective obligations under that Agreement.

4           17. This action, by or on behalf of Plaintiff and all Settlement Class  
5 members against Defendants by reason of the March 25, 2015 and March 31, 2015  
6 fax transmissions titled "Savings and Investing 20/20 for Medical Professionals"  
7 are hereby dismissed with prejudice and without taxable costs to any Party.

8           18. If (a) the Settlement Agreement is terminated pursuant to its terms, or  
9 (b) the Settlement Agreement or Final Approval Order and Judgment do not for any  
10 reason become effective, or (c) the Settlement Agreement or Final Approval Order  
11 and Judgment are reversed, vacated or modified in any material or substantive  
12 respect, then any and all orders entered pursuant to the Settlement Agreement shall  
13 be deemed vacated. If the settlement does not become final in accordance with the  
14 terms of the Settlement Agreement, this Final Approval Order and Judgement shall  
15 be void and be deemed vacated.

16           19. The Court retains jurisdiction for 180 days over this action. Plaintiff  
17 and all members of the Settlement Class and Defendants to determine all matters  
18 relating in any way to this Final Judgment and Order, the Preliminary Approval  
19 Order, or the Settlement Agreement, including but not limited to, their  
20 administration, implementation, interpretation or enforcement. The Court further  
21 retains jurisdiction to enforce tis Order.

22           20. The Court finds that there is no just reason to delay the enforcement of  
23 this Final Approval Order and Judgement.

24           **IT IS SO ORDERED.**

25  
26 DATED: September 22, 2017



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Hon. André Birotte Jr.  
United States District Judge